IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

DARREN DOHERTY,	§	
	§	
Plaintiff,	§	
	§	
v.	§	CASE NO. 1:16-cv-00003-LY
	§	
HARTFORD LIFE AND ACCIDENT INSURANCE COMPANY,	§	
	§	
	§	
Defendant.	§	

DEFENDANT HARTFORD LIFE AND ACCIDENT INSURANCE COMPANY'S RESPONSE TO PLAINTIFF'S TRIAL BRIEF[1]

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ATTORNEYS FOR DEFENDANT HARTFORD LIFE AND ACCIDENT INSURANCE COMPANY

[1] Hartford's Motion for Summary Judgment filed on December 7, 2016 is intended to be its Trial Brief pursuant to the Court's November 7, 2016 Order. Therefore, Hartford references its motion as "Hartford's Trial Brief." Plaintiff's counsel is not opposed to the Motion being characterized as Hartford's Trial Brief.

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DEFENDANT HARTFORD LIFE AND ACCIDENT INSURANCE COMPANY'S RESPONSE TO PLAINTIFF'S TRIAL BRIEF

PRELIMINARY STATEMENT

In Plaintiff's opening paragraph of his Trial Brief, he misstates the "sole question before the Court." Plaintiff asserts that the question before the Court is "whether Hartford can revisit its favorable STD disability determination in order to deny Doherty LTD benefits." However, the actual issue for the Court to decide is whether Hartford's decision to deny Plaintiff LTD benefits was reasonable, which is predicated upon whether Plaintiff proved that he was disabled throughout the applicable Elimination Period as required under the terms of the LTD policy.[2] Hartford did not "revisit" its STD determination at any time. Instead, Hartford conducted a separate and independent LTD review, which included a thorough review of the medical records, three independent peer reviews and communications with the Plaintiff himself. As outlined in detail in Hartford's Trial Brief, Hartford's review of Plaintiff's claim file correctly resulted in a finding that the Plaintiff was not disabled throughout the Elimination Period.

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[2] Plaintiff has not pled in his Complaint or Trial Brief the implications of TEX. INS. CODE ANN. § 1701.062. Moreover, Plaintiff admits that the plan confers discretion to Hartford. Plaintiff's Trial Brief, p. 6. Thus, the Court should analyze the case under an abuse of discretion standard of review.

A. THIS IS NOT A CASE OF FIRST IMPRESSION: COURTS HAVE RECOGNIZED THAT RECEIPT OF STD BENEFITS IS NOT A REQUIREMENT NOR QUALIFIER FOR RECEIPT OF LTD BENEFITS

Plaintiff's Trial Brief is based entirely on the premise that receipt of STD benefits throughout the LTD policy's Elimination Period automatically entitles a claimant to LTD benefits. Plaintiff also states that he believes the case is one of first impression. However, other Courts have addressed this very issue and have found that "[r]eceipt of short term disability benefits under the terms of the Policy constitutes neither a requirement nor a qualifier for entitlement to long term disability benefits." *Carroll v. Hartford Life & Accident Ins. Co*., 937 F. Supp. 2d 247 (D. Conn. 2013). In *Carroll*, Hartford approved STD benefits for the maximum period, which extended the LTD plan's Elimination Period. (The definition of Elimination Period in the *Carroll* case is the same definition in the instant case.) Hartford denied Carroll's LTD benefits because the medical records in the LTD claim file did not show that the claimant was disabled during the Elimination Period despite the fact that she was approved for STD benefits during the same time period. Carroll argued that the approval of her STD benefits was inconsistent with the denial of her LTD benefits. The court noted that STD and LTD claim files were different (as in the instant case), the LTD policy required a separate application (as in the instant case), and the court held that "she was not automatically entitled to LTD simply because she was paid STD, even though she had received short term disability benefits during the Elimination Period." *Id.* at 275-76.

Other courts have also found a claim administrator's denial of LTD benefits reasonable in cases where STD benefits had been approved. *See Billinger v. Bell Atl.*, 240 F. Supp. 2d 274 (S.D.N.Y. 2003), *aff'd*, 124 F. App'x 669 (2d Cir. 2005), *cert. denied*, 546 U.S. 843 (2005) (administrator did not abuse its discretion denying LTD claim after paying STD benefits); *Rall v. Aetna Life Ins. Co.*, 2013 WL 1768685 (D. Colo. Apr. 24, 2013), *aff'd*, 565 F. App'x 753, 756 (10th Cir. 2014), *cert. denied*, 135 S. Ct. 270 (2014) ("Aetna's approval of STD benefits did not guarantee approval of LTD benefits" and denial of LTD benefits was held reasonable); *Harvey v. Standard Ins. Co.*, 850 F. Supp. 2d 1269, 1290 (N.D. Ala. 2012), *aff'd*, 503 Fed. App'x 845 (11th Cir. 2013) (finding that insurer did not take inconsistent positions by approving STD benefits and denying LTD benefits). Indeed, these cases reiterate the general rule that "the insured has the burden of proving that a benefit is covered." *Harken Exploration Co. v. Sphere Drake Ins. PLC*, 261 F.3d 466, 471 (5th Cir. 2001); *W. Alliance Ins. Co. v. N. Ins. Co.*, 176 F.3d 825, 831 (5th Cir. 1999); *Hurst v. Bankers Life & Cas. Co.*, 2013 WL 12090091, *6 (W.D. Tex. Nov. 4, 2013). The burden is on Plaintiff to demonstrate his entitlement to LTD benefits independent from his STD claim. Plaintiff did not satisfy that burden during the course of the claim and has not satisfied his burden here.

B. HARTFORD'S LTD BENEFIT DETERMINATION WAS SEPARATE AND INDEPENDENT FROM ITS STD BENEFIT DETERMINATION

1. The STD claim review included only 8 pages of medical records and the LTD claim review for the same period was more than 800 pages

Plaintiff argues that Hartford's determination denying LTD benefits, made in July 2014 and affirmed in March 2015, is unreasonable because it was different than the determination made in February 2014 for STD benefits approved through April 2014. Plaintiff provides no authority for this assumption and argument. He cannot provide any authority because a simple comparison of the STD claim file compared to the LTD claim file demonstrates that the LTD benefit determinations were made after a separate, thorough, lengthy and detailed analysis of the claim. In contrast, after Plaintiff applied for STD benefits on February 10, 2014, Hartford reviewed six pages of medical records received on February 14, 2014 and approved STD benefits three days later, on February 17, 2014. Ex. B, AR839, 903-12 and 853. In the entire STD claim file, there are eight pages of medical records, including two Attending Physician Statements, referencing Plaintiff's self-reported complaints of pain and medication sedation. Ex. B, AR897, 899, 904-06, 909-10 and 912. There was no review of the medical records in the STD claim file by any doctor. The remainder of the STD claim file consists of a copy of the plan documents, fax coversheets, satisfaction surveys and Plaintiff's appeal of the STD benefit earnings calculation. In comparison, the LTD claim file contains hundreds of pages of medical records, peer review reports, doctor's office visit notes and other medical documentation. Similarly, there are 15 pages of Hartford internal comments regarding the claim review for the STD claim compared to 83 pages of internal comments regarding the claim file review for the LTD claim.

Plainly stated, Hartford reviewed much less evidence when it made the STD benefit determinations; STD determinations, by their nature, are made more quickly, and with less evidence, than LTD determinations. STD benefits are payable for a maximum duration of 12 weeks, and are payable after eight consecutive days of disability. Ex. C, AR963. LTD benefits are payable after satisfaction of the Elimination Period (in this case, 90-days or the expiration of STD benefits), and are payable up to age 65 (and possibly longer). *Id.* at AR922. It is logical to surmise that because STD benefits are designed to be paid quickly, and often for temporarily disabling conditions, STD claim determinations are typically made with less investigation and evaluation than LTD claim determinations.

2. If STD claim determinations "trumped" the LTD claim determinations, future claimants would suffer

If Plaintiff's assertion about the preclusive effect of paying STD benefits were accepted, this would likely injure future STD claimants. If a claim administrator understood that its decision on an STD claim might automatically result in paying LTD benefits, a claim administrator would need to conduct a claim evaluation similar to that required for an LTD benefit determination. A plan participant out of work for several weeks would likely find that he has to wait longer for an STD determination, submit much more extensive medical records, and engage in a more thorough and extensive process before receipt of STD benefits. Setting a precedent such as the one requested by Plaintiff in this case could prejudice future STD claimants.

3. The definition of disability is different in the two policies

In making benefit claim determinations, the policy definitions are important. Different policy definitions and provisions require different analyses. Although Plaintiff argues that the definition of disability is "substantially the same" in both policies, he is incorrect. The LTD policy states that:

> Disability or Disabled means You are prevented from performing one or more of the Essential Duties of:
>
> 1) Your Occupation during the Elimination Period;
>
> 2) Your Occupation, for the 24 month(s) following the Elimination Period . . . ; and
>
> 3) after that, Any Occupation.
>
> If at the end of the Elimination Period, You are prevented from performing one or more of the Essential Duties of Your Occupation, but Your Current Monthly Earnings are greater than 80% of Your Pre-Disability Earnings, Your Elimination Period will be extended for a total period of 12 months from the original date of Disability, or until such time as Your Current Monthly Earnings are less than 80% of Your Pre-Disability Earnings, whichever occurs first.

Ex. C, AR935. In contrast, the STD policy states:

> **Total Disability or Totally Disabled** means that You are prevented by:
>
> 1) Injury;
> 2) Sickness;
> 3) Mental Illness;
> 4) Substance Abuse; or
> 5) pregnancy;
> From performing the Essential Duties of Your Occupation . . .

Id. at AR975. The STD policy does not have an Elimination Period, an important and material term of the LTD policy. Thus, the STD policy does not require a claimant to demonstrate that he was disabled for any specified time. The LTD policy requires a claimant to submit proof that he was disabled from the date of alleged disability through the Elimination Period, which in Plaintiff's case was 90 days.

C. APPROVING STD BENEFITS DOES NOT "PREVENT WORKERS FROM RETURNING TO THE WORKPLACE"

Plaintiff argues that Hartford's approval of Plaintiff's STD benefits "effectively prevented Doherty from returning to the workplace." Plf. Brief, p. 5. To the contrary, it is Plaintiff that decided to stop working, despite the fact that his treating physician never recommended that he not work. Ex. A, AR241. Moreover, Plaintiff's treating physicians offered numerous treatment options that Plaintiff was "reluctant" to try, or refused to comply with. *Id.* at AR252 and 236. Instead, Plaintiff seemed to be concerned with getting "work excuses" from his physicians. *Id.* at AR230 and 267. Plaintiff's statement that Hartford's approval of STD benefits "effectively prevented Doherty from returning to the workplace" insinuates that Plaintiff had no incentive to return to work because Hartford was paying him while he was not working. In fact, Plaintiff specifically states in his brief that "he did not return to active work because he was on employer provided STD, approved by Hartford." Plf. Brief, p. 9. If the Court were to agree with Plaintiff that receipt of STD benefits satisfies the Elimination Period, then there certainly would be a disincentive for employees receiving STD benefits to return to work. Instead, capable employees should return to work. To state that approval of STD benefits means, in all cases, that LTD benefits are owed is simply incorrect and ignores the plain language of the LTD policies that require claimants to prove that they are disabled throughout the Elimination Period and beyond. Ex. C, AR926. If collecting STD benefits equated to an automatic approval of LTD benefits, the Plan would state as much but it clearly does not.

Plaintiff's theory that Hartford "games the system" and "hoodwinks claimants" by approving STD claims through the Elimination Period and then denies claimants with "seriously debilitating conditions" flies in the face of reason. Plf. Brief, p. 11. Unlike the Plaintiff here, if a claimant with a "seriously debilitating condition" were approved for STD benefits, it would stand to reason that due to his "seriously debilitating condition" the medical records would support limitations and restrictions, and would include medical opinions that establish the claimant satisfies the definition of disability under the applicable LTD policy. Any claimant seeking LTD benefits, whether or not STD benefits have been previously sought, approved, or denied, must satisfy the definition of disability under the LTD policy before LTD benefits are approved. Plaintiff is no exception.

D. PLAINTIFF CANNOT DEMONSTRATE THAT HE REMAINED DISABLED FROM THE DATE OF DISABILTY THROUGHOUT THE ELIMINATION PERIOD

Plaintiff also argues that if Plaintiff is deemed disabled at any time during the Elimination Period, he is entitled to disability benefits. This premise is incorrect. Instead, under the Plan, Plaintiff must prove that:

(1) he became disabled while insured under the Policy;
(2) *he remained disabled throughout the Elimination Period*;
(3) he remained disabled beyond the Elimination Period; and
(4) he submitted proof of loss to Hartford.

Ex. C., AR926 (emphasis added). In other words, a claimant is not entitled to LTD benefits unless he can demonstrate that he was disabled as of the date of claimed disability and he remained disabled throughout and beyond a specified period of time (the Elimination Period). In this case, Plaintiff cannot demonstrate that he was disabled even as of his last day of work, January 7, 2014. On January 7, 2014, Plaintiff saw his internal medicine physician, Dr. DeBehnke, complaining of chronic pain. Dr. DeBehnke noted that "there is no specific muscle group but tends to be upper shoulders back neck (*sic*) continues to give him an ongoing problem (*sic*) tends to be increased fatigue but no other focal findings are really noted." Ex. A, AR802. Although Plaintiff's claimed disability was chronic pain relating to his *feet* beginning January 7, 2014, no complaints relating to Plaintiff's feet were noted in the January 7, 2014 medical record. *Id.* at AR759 and 802. Moreover, Dr. DeBehnke, the physician that Plaintiff reported was handling his disability evaluation, "never made a recommendation that he not continue work." Ex. A, AR241 and 694.

Plaintiff also relies on incorrect statements that "the Plan states that a claimant who is on STD until the expiration of STD period has met the 'Elimination Period'" and "the Plan states that a claimant meets the Elimination Period by reaching the expiration of an employer provided STD Plan." (Plf. Brief, pp. 10-11). The LTD Plan documents do not state that a claimant "meets the Elimination Period" by receiving STD benefits; there is no such provision. Inclusion of the language argued by Plaintiff would materially change the substance of the definition of "Disabled" under the LTD policy by adding a basis by which a claimant is entitled to LTD benefits. Notably, Plaintiff does not cite to any policy language because it simply is not in there.

Plaintiff also argues that the "plain language of the Plan establishes that Doherty was continuously disabled throughout and beyond the Elimination Period." Plf. Brief, p. 8. The Plan does not establish a claimant's disability. Instead, as the policy dictates, disability must be proven by the claimant through medical records, peer reviews, and documented restrictions and limitations, among other things. Ex. C, AR926 (benefits are payable "if You . . . 4) submit Proof of Loss to Us."). Plaintiff did not provide the necessary proof to establish his disability in order for LTD benefits to become payable. He also fails to cite to even one medical record, one APS, or one document establishing restrictions and limitations that would demonstrate he was incapable of performing the essential duties of his occupation in his Brief.

Plaintiff also argues that the definition of Elimination Period in the Plan documents establishes that Plaintiff was continuously disabled. This is also nonsensical. The definition of the Elimination Period simply identifies the timeframe that must elapse as the "longer of": 1) the "number of consecutive days at the beginning of any one period of disability which must elapse before benefits are payable; or 2) the expiration of any Employer sponsored short term Disability benefits or salary continuation period." Ex. C, AR921 and 935. The purpose of section 2 of this provision is to ensure that claimants receiving STD benefits do not receive both STD benefits and LTD benefits at the same time. All STD benefits and salary continuation benefits must be exhausted before someone can receive LTD benefits to avoid double-dipping of income benefits.

E. HARTFORD DID NOT MISINTERPRET POLICY LANGUAGE

Plaintiff argues that Hartford "ignored" the full definition of "Elimination Period," but admits that Hartford correctly calculated maximum STD benefits as expiring on April, 2014. *See* Plf. Brief, p. 9. Moreover, as Plaintiff points out in his Brief, Hartford noted in its claim file that the Elimination Period was extended for STD benefits, that STD benefits ended on April, 2014, and that the LTD effective date was April 8, 2014. *Id.* This simply means that in accordance with the policy terms, the Elimination Period did not end until Plaintiff's receipt of STD benefits ended. Hartford did not ignore the Elimination Period definition. To the contrary, in its thorough analysis of the claim file, Hartford determined that Plaintiff did not prove that he was disabled throughout the applicable Elimination Period, beginning January 7, 2014 and continuing through April, 2014. Plaintiff is trying to use the definition of Elimination Period to prove eligibility for benefits under the policy. While the timeframe of the Elimination Period is important, it does not in and of itself establish that Plaintiff was entitled to benefits. During the course of the LTD claim, Plaintiff failed to prove his entitlement to benefits throughout the Elimination Period. Notably, in his Brief, Plaintiff also failed to reference any medical records, analyses, APS, physician reports, or other medical documentation in this case to prove his entitlement to benefits.

Lastly, Plaintiff's argument that LTD "[c]overage is extended while on approved employer paid STD" and that the Elimination Period is satisfied is incorrect. There is no provision in the policy that extends LTD coverage while on approved STD. Notably, Plaintiff did not cite to any provision in the policy to support his contention. Even so, continuation of coverage is not relevant to the satisfaction of the policy's Elimination Period. Instead, the policy's "Continuation Provisions" allows for a continuation of *coverage* for LTD benefits in certain circumstances, but receipt of STD benefits is not one of them. Ex. C, AR925.

The only way Plaintiff can be eligible for LTD benefits is for him to demonstrate that he met the LTD plan definition of disability, which requires a showing of disability beginning on the first day of claimed disability (January 7, 2014) and continuing through the last day of the Elimination Period (April, 2014). Plaintiff failed to make such a showing.

CONCLUSION

For the reasons stated above, the Court should find in Hartford's favor and find that Hartford's decision was not an abuse of discretion, was reasonable, correct, and supported by the evidence, and enter judgment in favor of Hartford on all of Plaintiff's claims.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that on December 16, 2016, I caused the foregoing Response to be electronically filed with the Clerk of the Court using the CM/ECF system which will send notice to all counsel of record as listed below:

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